

4. While Plaintiff is correct when he states that “Courts have been mixed on this issue”¹, the Plaintiff is incorrect when he further states that “[t]his issue was addressed by this very District....”²

5. Plaintiff cites to *Callier v. Capital*, No. EP-21-CV-00011-DCG, 2021 U.S. Dist. LEXIS 126447 (W.D. Tex. Apr. 22, 2021) and claims that this matter has already been decided within the Western District.

6. It is important for this Court to note the context of *Callier v. Capital*, which was a case wherein the remaining Defendants (others were discharged via settlement) were defaulted.

7. The specific order referenced by Plaintiff, entered on April 22, 2021, was an order on Plaintiff’s Motion for Default Judgment.

8. The Court in that case, faced with defaulted Defendants unwilling to participate in the judicial process, conducted a brief, surface-level analysis of whether a private right of action exists under 47 C.F.R. § 64.1200(d). *Id* at 8.

9. Because that Court was not actually presented with the problem and question of law raised by Defendants in this matter, which is whether 47 C.F.R. § 64.1200(d) is promulgated under 47 U.S.C. § 227(d) or 47 U.S.C. § 227(c)(5), the Court did not substantively address the issue that is currently before this Court. *Id* at 10.

10. Defendants respectfully submit that, because the Court in *Callier v. Capital* was not presented with this specific issue, any holding that may be derived from the April 22, 2021 order is merely dicta and in no way binding on this Court.

11. As such, Plaintiff’s suggestion that this issue has been decided in this District is inaccurate and should not be given the weight that Plaintiff desires.

¹ See the top of Page 2 of Docket Entry 24, Plaintiff’s Response to Defendants’ Motion to Dismiss.

² See the top of Page 3 of Docket Entry 24, Plaintiff’s Response to Defendants’ Motion to Dismiss.

Wherefore, based on the foregoing, and the arguments presented in Defendants' Motion to Dismiss, Count II of Plaintiff's First Amended Complaint should be dismissed with prejudice for failing to state a claim upon which relief can be granted.

Dated: March 17, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2022, a true and correct copy of the foregoing *Defendants' Reply to Plaintiff's Response to Defendants' Motion to Dismiss Plaintiff's First Amended Complaint* was electronically filed with the Clerk of Court using the CM/ECF system and was served, via United States Mail, first-class postage prepaid, on the following *Pro Se* Plaintiff:

Brandon Callier
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/s/ Forrest M. "Teo" Seger III
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